

## § 1965.15

103-354 office) of this subpart, "Memorandum of Understanding between Bureau of Sport Fisheries and Wildlife (now the U.S. Fish and Wildlife Service) and the Farmers Home Administration or its successor agency under Public Law 103-354," outlines the procedure to follow in processing a subordination of an FmHA or its successor agency under Public Law 103-354 mortgage on wetlands on which the Bureau of Sport Fisheries and Wildlife requests an easement for waterfowl habitats. The County Supervisor will handle the request in accordance with the steps outlined in Exhibit A and applicable processing portions of §1965.12 of this subpart.

### **§ 1965.15 Subordination of FmHA or its successor agency under Public Law 103-354's lien to the Commodity Credit Corporation's (CCC) security interest taken for loans made for farm storage and drying equipment.**

The CCC makes loans under its Farm Storage and Drying Equipment Loan Program for the purchase, construction, erection, remodeling, or installation of either farm storage or drying equipment or both and requires that any loan at the discretion of the approving committee, be secured by a lien on the real estate. When the CCC proposes to make a loan to an FmHA or its successor agency under Public Law 103-354 borrower and requests a subordination of the FmHA or its successor agency under Public Law 103-354 real estate lien, the request will be handled on an individual case basis under §1965.12 of this subpart. A borrower's request for the FmHA or its successor agency under Public Law 103-354's consent to a severance agreement or other similar instrument for an item or items to be acquired with a CCC loan will be handled under §1965.19 of this subpart.

### **§ 1965.16 Consent to junior liens.**

As a general policy, FmHA or its successor agency under Public Law 103-354 borrowers will be discouraged from giving other creditors junior liens on real estate securing an FmHA or its successor agency under Public Law 103-354 loan. (For Sections 502 and 504 loans,

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see §1965.111 of Subpart C of Part 1965 of this chapter).

(a) *Processing request.* When consent to a junior lien is requested by a borrower, the County Supervisor may consent by executing Form FmHA or its successor agency under Public Law 103-354 465-1 or other form approved by OGC for use in the state provided:

(1) The terms of the junior lien debt are such that repayment is not likely to jeopardize payment of the FmHA or its successor agency under Public Law 103-354 loan;

(2) Operating plans made with the junior lienholder are consistent with plans made with FmHA or its successor agency under Public Law 103-354;

(3) Total debt against the security will not exceed its market value; and

(4) The junior lienholder agrees in writing not to foreclose the mortgage before a discussion with the County Supervisor and after giving a reasonable specified period of written notice to FmHA or its successor agency under Public Law 103-354.

(b) *Consent not requested or granted.* When a junior lien is placed on any property without FmHA or its successor agency under Public Law 103-354 consent and consent cannot be granted under this section, FmHA or its successor agency under Public Law 103-354 may continue with the loan as long as the borrower pays FmHA or its successor agency under Public Law 103-354 loans as agreed, maintains the security, and meets all other conditions of the loan. The existence of a junior lien cannot be treated as a default. The County Supervisor will continue to service the loan to protect the Government's security interest.

### **§ 1965.17 Lease of security.**

(a) *General provisions.* When the County Supervisor learns that a borrower is leasing or intends to lease all or a portion of the security, the County Supervisor will ask the borrower for a copy of the lease, if it is written. If the borrower leases or proposes to lease the real estate security for a term of more

than 3 years or with an option to purchase, the County Supervisor will normally initiate liquidation action in accordance with §1965.26(b) of this subpart. However, if under unusual circumstances the County Supervisor believes FmHA or its successor agency under Public Law 103-354 should consent to such a lease arrangement, prior approval of the Assistant Administrator, Farmer Programs, or the Administrator, if a SFH loan is secured by the same security, is required. The State Director should forward such a request, along with a justification to the National Office. No action will be taken to disapprove or to approve a lease if the lease is for less than three years and contains no option to purchase; however, if under the lease of security, the borrower ceases to operate the farm, action will be taken in accordance with §1965.26(d) of this subpart.

(b) *Liquidation.* No action to initiate liquidation based on the lease will be taken unless the borrower:

(1) Enters into a lease for a term of more than 3 years; or

(2) Enters into a lease for any term containing an option to purchase.

(c) *Mineral leases.* When a borrower requests consent to lease the mineral rights to security, the County Supervisor may consent provided the proposed use of the leased rights will not result in the Government's security interest being adversely affected. If applicable, the requirements of Subpart G of Part 1940 of this chapter must be met. A borrower does not need FmHA or its successor agency under Public Law 103-354's consent to lease the mineral rights securing a Farmer Program loan approved after December 23, 1985, unless the oil, gas or other minerals were included on FmHA or its successor agency under Public Law 103-354's real estate appraisal. If FmHA or its successor agency under Public Law 103-354 consent is needed and consent is given, lease payments can be used for prospective payments on FmHA or its successor agency under Public Law 103-354 loans. Any payment or other compensation the borrower may receive for damages to the surface of the collateral real estate resulting from exploration for or recovery of minerals will

be assigned to FmHA or its successor agency under Public Law 103-354 and will be used to repair the damage or used as authorized in §1965.13(f) of this Subpart. Form FmHA or its successor agency under Public Law 103-354 465-1 will be used to process requests under this section. The County Supervisor should carefully document the facts to support the determinations reached concerning the effects of a mineral lease on the Government security. Assignment of income will be taken by use of Form FmHA or its successor agency under Public Law 103-354 443-16, "Assignment of Income from Real Estate Security," or other form approved by OGC which is necessary to comply with State law.

[51 FR 4140, Feb. 3, 1986, as amended at 53 FR 35795, Sept. 14, 1988; 58 FR 52654, Oct. 12, 1993]

**§ 1965.18 Transfer of upland cotton, peanut, or tobacco allotments.**

(a) *General.* Agriculture Stabilization and Conservation Service (ASCS) regulations, pursuant to approved legislation, permit the transfer of upland cotton, peanut, or tobacco allotments by one or more of the following transactions: (1) Sale, (2) lease, or (3) transfer by the owner to another farm owned or controlled by the owner. These regulations require, among other things, that no allotment be transferred from a farm which is subject to a mortgage or other lien, unless the transfer is agreed to by the lienholders. It is FmHA or its successor agency under Public Law 103-354's policy to approve the transfer of any crop allotments permitted by the ASCS regulations if the conditions and requirements of this subpart can be met. FmHA or its successor agency under Public Law 103-354 personnel should familiarize themselves with the States ASCS policies and requirements concerning the sale, lease, or transfer of allotments to assure compliance with established FmHA or its successor agency under Public Law 103-354 policies and servicing of security.

(b) *Authorization.* County Supervisors are authorized to approve a transfer of upland cotton, peanut, or tobacco allotment by execution of a completed Form FmHA or its successor agency under Public Law 103-354 465-1. County